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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,868	07/03/2000	Kenneth Gordon Walker	W2450002	3798

720 7590 11/25/2002

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,868

Applicant(s)

WALKER, KENNETH GORDON

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13,22,23,28,31,33 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13,22,23,28,31,33 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/3/00 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13, 22, 23, 28, 31, 33 and 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,741,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because patent No. 5,741,237 discloses every material element of the claimed invention. It is noted that a patent to a species may not be followed by a patent to a genus.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. § 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. § 122(b). Therefore, this application is examined under 35 U.S.C. § 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

Claims 31 and 36 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Schneider* (5,713,879).

Regarding claim 31, *Schneider* teaches a lid (2) for covering a canister body (1), said lid (2) and canister body (1) together forming a canister for receiving fluids, said canister body (1) having side walls and a bottom, said lid (2) comprising:

an inlet port (9) in said lid (2) for inflow of fluids into said canister;

an outlet port in said lid for outflow of fluids from said canister;

a conduit (8) in fluid communication with said outlet port, said conduit (8) extending to the bottom of said canister body (1) when said lid (2) is placed in covering relation to said canister body (1); and

a vacuum port (18) in said lid (2) for application of vacuum to said canister for inducing flow of fluids into said canister (*see* Fig. 1, below).

It is noted that outlet port is the point in the lid (2) where the outlet tubes (7, 8) meet. It is further noted that parent application No. 09/394,282 to *Schneider* has been reviewed by the examiner and supports all of the elements used in this rejection.

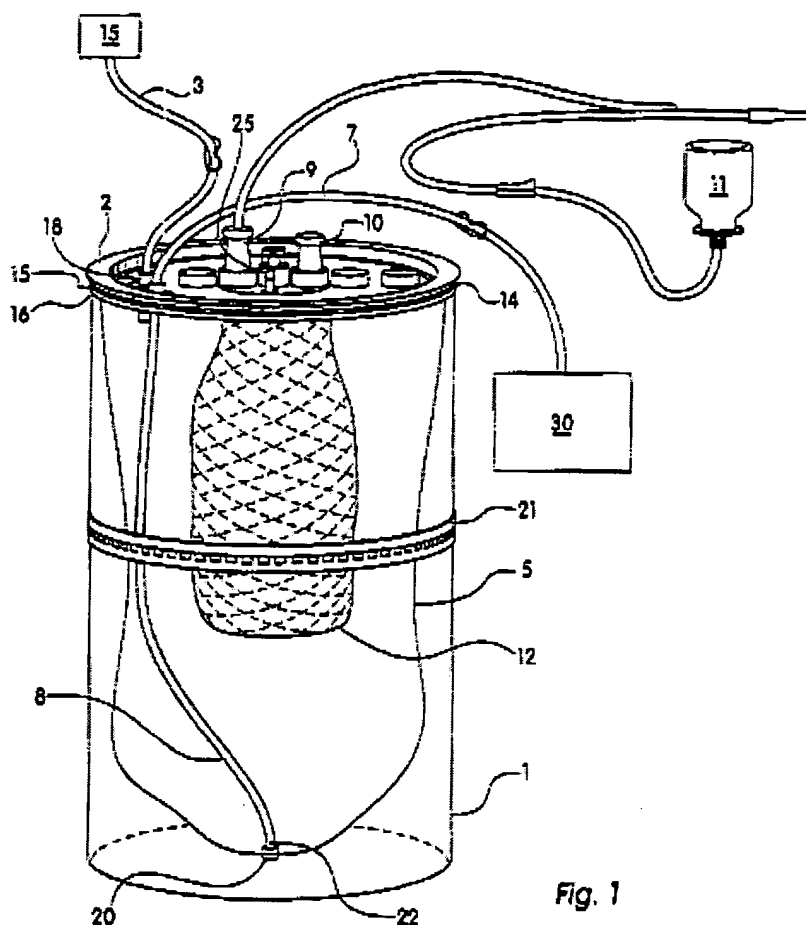
Regarding claim 36, *Schneider* teaches a suction canister, comprising:

a chamber for receiving fluids (1), said chamber being partially defined by a bottom wall;
an inlet (9) communicating with said chamber for the inflow of said fluids into said chamber;

a vacuum port (18) communicating with said chamber for application of vacuum to said chamber;

an outlet communicating with said chamber for outflow of said fluids from said chamber;
and

a conduit (8) in fluid communication with said outlet and extending to said bottom wall of said chamber (*see* Fig. 1, below).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schneider* as applied to claims 31 and 36, above, and further in view of *Nichols* (4,347,946).

Schneider expressly teaches every element of the claimed invention except for a closure for the outlet port.

Nichols teaches a suction canister with closures (30) for various types of ports including an outlet port (16).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the outlet port closure (30) of *Nichols* with the blood collecting device of *Schneider* in order to prevent contaminants from entering the receptacle (*Nichols*, col. 1, lines 34-43).

Regarding claims 4 and 23, *Schneider* teaches a removable lid (2).

Claims 2 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schneider* and *Nichols* as applied to claims 1, 31 and 36 above, and further in view of *Rishton* (5,634,893).

Schneider and *Nichols* teach every element of the claimed invention except for a check valve.

Rishton teaches a check valve (34).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the check valve (34) of *Rishton* with the blood collecting device of *Schneider* and *Nichols* in order to maintain the vacuum within the canister after the vacuum line has been removed (*Rishton*, col. 4, lines 45-53).

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schneider* and *Nichols* as applied to claim 1 above, and further in view of *Hesselman* (3,382,886).

Schneider and *Nichols* teach every element of the claimed invention except for the inlet conduit extending into the canister.

Hesselman teaches an inlet conduit (6) extending into the interior of a suction canister (7).

At the time of the invention, it would have been obvious to one of ordinary skill in the inward extension if the inlet conduit of *Hesselman* with the blood collecting device of *Schneider* and *Nichols* in order minimize turbulent fluid flow into the canister.

Response to Arguments

Applicant's arguments with respect to claims 31 and 36 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

The indicated allowability of claims 1-13, 22, 23 and 28 is withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached Monday-Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached at telephone number (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Art Unit: 3761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.



Michael G. Bogart
November 14, 2002



DENNIS RUHL
PRIMARY EXAMINER